

Voter Photo Identification

Common Cause/Georgia v. Billups (*Harold L. Murphy, N.D. Ga. 4:05-cv-201*)

On September 19, 2005, Georgia voters filed a federal complaint challenging the constitutionality of Georgia’s voter photo-identification law. The district judge signed a proposed order to show cause why a preliminary injunction should not be granted and scheduled a hearing for October 12. On October 18, the court granted a preliminary injunction. Georgia enacted a revised photo-identification law in 2006; in 2007, the court determined that the revised law was constitutional. The court of appeals agreed in 2009.

Subject: Voter identification. *Topics:* Voter identification; intervention; news media; section 5 preclearance.

Several voters’ rights organizations filed a federal action on September 19, 2005, to declare Georgia’s new voter photo-identification law unconstitutional.¹ Defendants were Georgia’s secretary of state, who was chair of the state’s election board, and election officials in seven of the 11 counties in the Northern District of Georgia’s Rome Division.²

In response to the plaintiffs’ request for a preliminary injunction,³ on the day the complaint was filed, Judge Harold L. Murphy signed a proposed order to show cause why the preliminary injunction should not be granted, and he set a hearing for October 12.⁴ Because the plaintiffs had not filed a supporting brief by October 3, Judge Murphy ordered them to do so by October

1. Complaint, *Common Cause/Ga. v. Billups*, No. 4:05-cv-201 (N.D. Ga. Sept. 19, 2005), D.E. 1 [hereinafter *Common Cause/Ga. Complaint*]; *Common Cause/Ga. v. Billups*, 554 F.3d 1340, 1346 (11th Cir. 2009); *Common Cause/Ga. v. Billups*, 439 F. Supp. 2d 1294, 1297 (N.D. Ga. 2006); see Carlos Campos & James Salzer, *Suit Slams Voter ID Law*, Atlanta J.-Const., Sept. 20, 2005, at A1; see also Amended Complaint, *Common Cause/Ga.*, No. 4:05-cv-201 (N.D. Ga. Oct. 12, 2005), D.E. 41.

2. *Common Cause/Ga. Complaint*, *supra* note 1; see 28 U.S.C. § 90(a)(3) (listing counties in the division); N.D. Ga. L.R. app. A.I.4 (same).

“[I]t was noticeable when the liberal groups bunched their plaintiffs and defendants in a handful of relatively rural counties near one another.” Walter C. Jones, *Shopping Around Helped ID Case*, Augusta Chron., Oct. 30, 2005, at B5.

3. Preliminary-Injunction Motion, *Common Cause/Ga.*, No. 4:05-cv-201 (N.D. Ga. Sept. 19, 2005), D.E. 2; see *Common Cause/Ga. v. Billups*, 504 F. Supp. 2d 1333, 1337 (N.D. Ga. 2007); *Common Cause/Ga.*, 439 F. Supp. 2d at 1297–98.

4. Order, *Common Cause/Ga.*, No. 4:05-cv-201 (N.D. Ga. Sept. 19, 2005), D.E. 3; see *Common Cause/Ga.*, 504 F. Supp. 2d at 1337; *Common Cause/Ga.*, 439 F. Supp. 2d at 1298; see also Brandon Larrabee, *Debate Heads to Federal Court*, Augusta Chron., Oct. 9, 2005, at B8.

Tim Reagan interviewed Judge Murphy for this report by telephone on October 12, 2012. Judge Murphy died on December 28, 2022. Federal Judicial Center Biographical Directory of Article III Federal Judges, www.fjc.gov/history/judges.

6.⁵ The order to show cause and the briefing order helped to get the case moving quickly.⁶

On October 5, the election board moved to intervene.⁷ At a telephone conference that day, Judge Murphy granted the motion.⁸ On October 18, six days after the hearing,⁹ Judge Murphy issued a 123-page order enjoining application of the new photo-identification law.¹⁰ On October 20, Judge Murphy denied Georgia's motion to stay the injunction pending appeal.¹¹ The court of appeals denied a stay one week later.¹²

The case received considerable attention from the news media, but that did not interfere with the case's proceedings.¹³

In 2006, Georgia enacted a new voter photo-identification law, which the U.S. Justice Department precleared pursuant to section 5 of the Voting Rights Act.¹⁴ The plaintiffs amended their complaint to challenge the constitutionality of the new law on April 26, 2006.¹⁵ On July 14, Judge Murphy en-

5. Order, *Common Cause/Ga.*, No. 4:05-cv-201 (N.D. Ga. Oct. 3, 2005), D.E. 19; see *Common Cause/Ga.*, 504 F. Supp. 2d at 1337; *Common Cause/Ga.*, 439 F. Supp. 2d at 1298.

6. Interview with Hon. Harold L. Murphy, Oct. 12, 2012.

7. Intervention Motion, *Common Cause/Ga.*, No. 4:05-cv-201 (N.D. Ga. Oct. 5, 2005), D.E. 20.

8. Order, *id.* (Oct. 5, 2005), D.E. 24; Minutes, *id.* (Oct. 5, 2005), D.E. 22.

9. Transcript, *id.* (Oct. 12, 2005, filed Oct. 26, 2005), D.E. 54.

10. *Common Cause/Ga. v. Billups*, 406 F. Supp. 2d 1326 (N.D. Ga. 2005) (fifty-three pages in the *Federal Supplement*); see *Common Cause/Ga. v. Billups*, 554 F.3d 1340, 1346 (11th Cir. 2009); *Common Cause/Ga.*, 504 F. Supp. 2d at 1338; *Common Cause/Ga.*, 439 F. Supp. 2d at 1298; see also Brandon Larrabee, *Federal Judge Stalls Georgia Voter ID Law*, *Augusta Chron.*, Oct. 19, 2005, at B4; Bill Rankin, *Judge Halts Voter ID Law*, *Atlanta J.-Const.*, Oct. 19, 2005, at A1; Daniel P. Tokaji, *The New Vote Denial: Where Election Reform Meets the Voting Rights Act*, 57 S.C. L. Rev. 689, 699, 713 (2006).

11. Order, *Common Cause/Ga.* Supp. 2d at 1338; *Common Cause/Ga.*, 439 F. Supp. 2d at 1298; see also Bill Rankin, *Judge Firm on Voter ID Ruling*, *Atlanta J.-Const.*, Oct. 21, 2005, at D5.

12. Docket Sheet, *Common Cause/Ga. v. Billups*, No. 05-15784 (11th Cir. Oct. 21, 2005) (noting denial of a stay on Oct. 27, 2005, and remand of the case on Feb. 9, 2006); see *Common Cause/Ga.*, 504 F. Supp. 2d at 1338; *Common Cause/Ga.*, 439 F. Supp. 2d at 1298; see also Bill Rankin, *Hold on Photo ID Law Upheld*, *Atlanta J.-Const.*, Oct. 28, 2005, at A1.

13. Interview with Hon. Harold L. Murphy, Oct. 12, 2012.

14. Notice, *Common Cause/Ga.*, No. 4:05-cv-201 (N.D. Ga. Apr. 21, 2006), D.E. 83; see Voting Rights Act of 1965, Pub. L. No. 89-110, § 5, 79 Stat. 437, 439, *as amended*, 52 U.S.C. § 10304 (requiring preclearance of changes to voting procedures in jurisdictions with a certified history of discrimination); see also *Common Cause/Ga.*, 554 F.3d at 1346-47; *Common Cause/Ga.*, 504 F. Supp. 2d at 1338; Carlos Campos & Nancy Badertscher, *U.S. Oks Latest ID Voter Law*, *Atlanta J.-Const.*, Apr. 22, 2006, at E1; Shannon McCaffrey, *Georgia Voter ID Law Cleared*, *Augusta Chron.*, Apr. 22, 2006, at A1.

On June 25, 2013, the Supreme Court declined to hold section 5 unconstitutional, but the Court did hold unconstitutional the criteria for which jurisdictions require section 5 preclearance. *Shelby County v. Holder*, 570 U.S. 529 (2013).

15. Second Amended Complaint, *Common Cause/Ga.*, No. 4:05-cv-201 (N.D. Ga. Apr. 26, 2006), D.E. 85; see *Common Cause/Ga.*, 504 F. Supp. 2d at 1338; *Common Cause/Ga.*, 439 F. Supp. 2d at 1298.

joined application of the new law to the July 18 primary elections and any necessary runoff elections.¹⁶

One week earlier, a state court judge had similarly enjoined application of the law during the primary elections,¹⁷ and Georgia's supreme court denied a stay of that order.¹⁸ On June 11, 2007, however, Georgia's supreme court concluded that the plaintiff in the state case lacked standing because she possessed sufficient identification to entitle her to vote.¹⁹

Two voters without the required identification documents filed a separate complaint on August 16²⁰ and sought on August 17 to consolidate their action with the 2005 case.²¹ Pending in the 2005 case was a motion to add these two voters as plaintiffs,²² a motion that Judge Murphy granted on August 17.²³ He denied the motion to consolidate the new action, because the new action was redundant and trial was approaching in the first action.²⁴ In 2008, the new action was dismissed voluntarily.²⁵

On September 6, 2007, after a bench trial, Judge Murphy determined that after the 2006 statutory change, the plaintiffs' complaint was ultimately without merit, and he awarded judgment to the defendants.²⁶ The court of appeals agreed on January 14, 2009.²⁷

16. *Common Cause/Ga.*, 439 F. Supp. 2d at 1360; see *Common Cause/Ga.*, 504 F. Supp. 2d at 1340; see also Brenda Goodman, *Federal Judge Rules Voter ID Card Law in Georgia Is Illegal*, N.Y. Times, July 13, 2006, at A18; Errin Haines, *Voter Photo ID Rule Ruled Out*, Augusta Chron., July 13, 2006, at B1; Sonji Jacobs & Carlos Campos, *Photo ID Law Suffers 2 Setbacks*, Atlanta J.-Const., July 13, 2006, at B1.

17. Temporary Restraining Order, *Lake v. Perdue*, No. 2006CV119207 (Ga. Sup. Ct. July 7, 2006), filed as Ex. 1, State Motion, *Common Cause/Ga.*, No. 4:05-cv-201 (N.D. Ga. July 7, 2006), D.E. 113; see *Common Cause/Ga.*, 504 F. Supp. 2d at 1340; see also Carlos Campos, *Voter ID Law on Hold*, Atlanta J.-Const., July 8, 2006, at A1; Brenda Goodman, *Judge Blocks Requirement in Georgia for Voter ID*, N.Y. Times, July 8, 2006, at A10.

18. See *Common Cause/Ga.*, 504 F. Supp. 2d at 1340.

19. *Perdue v. Lake*, 647 S.E.2d 6, 7–8 (Ga. 2007); see *Common Cause/Ga.*, 554 F.3d at 1347; *Common Cause/Ga.*, 504 F. Supp. 2d at 1341.

20. Complaint, *Young v. Billups*, No. 4:07-cv-163 (N.D. Ga. Aug. 16, 2007), D.E. 1.

21. Emergency Motion, *id.* (Aug. 17, 2007), D.E. 2.

22. Motion to Amend Complaint, *Common Cause/Ga.*, No. 4:05-cv-201 (N.D. Ga. Aug. 13, 2007), D.E. 159.

23. Order, *id.* (Aug. 17, 2007), D.E. 181; see Amendment to Second Amended Complaint, *id.* (Aug. 20, 2007), D.E. 193.

24. Order, *Young*, No. 4:07-cv-163 (N.D. Ga. Aug. 17, 2007), D.E. 3.

25. Voluntary Dismissal, *id.* (Apr. 24, 2008), D.E. 5.

26. *Common Cause/Ga. v. Billups*, 504 F. Supp. 2d 1333, 1383 (N.D. Ga. 2007); see *Common Cause/Ga. v. Billups*, 554 F.3d 1340, 1348 (11th Cir. 2009); see also Shaila Dewan, *Photo IDs for Voters Are Upheld*, N.Y. Times, Sept. 7, 2007, at A22; Vicky Eckenrode, *Voting ID Law Upheld*, Augusta Chron., Sept. 7, 2007, at B1; Bill Rankin & Jim Galloway, *State Law Upheld*, Atlanta J.-Const., Sept. 7, 2007, at A1.

27. *Common Cause/Ga.*, 554 F.3d at 1352–55, *cert. denied*, *NAACP v. Billups*, 556 U.S. 1282 (2009); see Bill Rankin, *Georgia's Voter ID Law Upheld in Federal Appeals Court Ruling*, Atlanta J.-Const., Jan. 15, 2009, at C3.